

crops are not to be construed to be individual program eligibility determinations or extent of eligibility determinations and are, therefore, not subject to administrative review.

(g) Where there is any conflict between the basic provisions and the regulations, the regulations apply except when the Deputy Administrator determines that because of the timing of issuance of the regulations, the basic provisions applicable to the specific crop year or coverage period that may be less restrictive will apply.

[79 FR 74571, Dec. 15, 2014]

§ 1437.3 Definitions.

The terms and definitions in this section apply to NAP. The terms and definitions in part 718 of this title and part 1400 of this chapter also apply to NAP, except where those same terms are defined in this section. In that case, the terms and definitions of this section apply.

Acres devoted to the eligible crop means the total planted and considered planted (P&CP) acres of the eligible crop.

Additional coverage means insurance coverage offered by the Federal Crop Insurance Corporation under sections 508(c) or 508(h) of the Federal Crop Insurance Act.

Administrative county office means the county FSA office designated to make determinations, handle official records, and issue payments for the producer in accordance with 7 CFR part 718.

Agricultural experts means persons who are employed by the National Institute of Food and Agriculture, or the agricultural departments of universities, or other persons approved by FSA, whose research or occupation is related to the specific crop or practice for which such expertise is sought.

Animal Unit Days (AUD) means an expression of expected or actual stocking rate for pasture or forage.

Application closing date means the last date, as determined by FSA, producers can submit an application for coverage for noninsured crops for the specified crop year and coverage period.

Application for coverage means the form specified by FSA to be completed by a producer applying for NAP coverage for an eligible crop that is ac-

companied by the service fee or service fee waiver form in the administrative county office by the application closing date.

Basic provisions means the document summarizing the terms and conditions of NAP coverage for a crop year that are acknowledged as having been received by the person or legal entity who signs an application for coverage according to this part.

Buffer zone means a parcel of land, as designated in an organic system plan, that separates agricultural commodities grown under organic practices from agricultural commodities grown under non-organic practices and is used to minimize the possibility of unintended contact by prohibited substances or organisms.

Buy-up coverage means NAP assistance that is available for all eligible NAP covered crops (other than for crops and grasses intended for grazing) at a payment amount that is equal to an indemnity amount calculated for buy-up coverage computed under section 508(c) or (h) of the Federal Crop Insurance Act and equal to the amount that the buy-up coverage yield for the crop exceeds the actual yield for the crop.

Buy-up coverage yield means not less than 50 percent nor greater than 65 percent of the approved yield for the crop, as elected by the NAP covered participant and specified in 5-percent increments.

Bypass year means a year that the producer did not obtain NAP coverage for the crop and did not file a report of acreage or production, or obtained NAP coverage for the crop and had reported or determined zero acres devoted to the eligible crop.

Catastrophic coverage means:

(1) For insured crops, the coverage offered by the Federal Crop Insurance Corporation (FCIC) under section 508(b) of the Federal Crop Insurance Act.

(2) For eligible NAP crops, coverage at the following levels due to an eligible cause of loss impacting the NAP covered crop during the coverage period:

- (i) Prevented planting in excess of 35 percent of the intended acres;
- (ii) A yield loss in excess of 50 percent of the approved yield;

(iii) A value loss in excess of 50 percent; or

(iv) An animal-unit-days (AUD) loss greater than 50 percent of expected AUD.

Certified organic acreage means acreage in the certified organic farming operation that has been certified by a certifying agent as conforming to organic standards specified in part 205 of this title.

Certifying agent means a private or governmental entity accredited by the United States Department of Agriculture (USDA) Secretary for the purpose of certifying a production, processing or handling operation as organic.

Conventional farming practice means any good farming practice that is not an organic farming practice.

Crop year means the calendar year in which the crop is normally harvested or in which the majority of the crop would have been harvested. For value loss and other specific commodities, see the applicable subpart and section of this part. For crops for which catastrophic coverage or buy-up coverage is available, the crop year will be as defined by such coverage.

Feedstock means a crop including, but not limited to, grasses or legumes, algae, cotton, peanuts, coarse grains, small grains, oil seeds, or short rotation woody crops, that is grown expressly for the purpose of producing a biobased material or product, and does not include residues and by-products of crops grown for any other purpose.

Fiber means a slender and greatly elongated natural plant filament, e.g. cotton, flax, etc. used in manufacturing, as determined by FSA.

Final planting date means the date which marks the end of the planting period for the crop and in particular the last day, as determined by FSA, the crop can be planted to reasonably expect to achieve 100 percent of the expected yield in the intended harvest year or planting period.

Food means a material consisting essentially of protein, carbohydrates, and fat used in the body to sustain growth, repair, and vital processes including the crops used for the preparation of food, as determined by FSA.

Generally recognized means when agricultural experts or organic agricultural experts, as applicable, are aware of the production method or practice and there is no genuine dispute regarding whether the production method or practice allows the crop to make normal progress toward maturity and produce at least the yield used to determine the production guarantee or amount of insurance.

Good farming practices means the cultural practices generally recognized as compatible with agronomic and weather conditions and used for the crop to make normal progress toward maturity and produce at least the individual unit approved yield, as determined by FSA. These practices are:

(1) For conventional farming practices, those generally recognized by agricultural experts for the area, which could include one or more counties; or

(2) For organic farming practices, those generally recognized by the organic agricultural experts for the area or contained in the organic system plan that is in accordance with the National Organic Program specified in part 205 of this title.

Guarantee means the level of coverage provided based on the application for coverage and buy-up coverage elected under the provisions of this part.

Hand-harvested crop means a non-forage crop that is not harvested mechanically and is removed from a field by hand.

Harvested means the producer has removed the crop from the field by hand, mechanically, or by grazing of livestock. The crop is considered harvested once it is removed from the field and placed in a truck or other conveyance or is consumed through the act of grazing. Crops normally placed in a truck or other conveyance and taken off the crop acreage, such as hay are considered harvested when in the bale, whether removed from the field or not.

Industrial crop means a commercial crop, or other agricultural commodity used in manufacturing or grown expressly for the purpose of producing a feedstock for renewable biofuel, renewable electricity, or biobased products. Industrial crops include castor beans, chia, crambe, crotalaria, cuphea, guar, guayule, hesperaloe, kenaf, lesquerella,

meadowfoam, milkweed, plantago ovato, sesame, and other crops specifically designated by FSA. Industrial crops exclude any plant that FSA has determined to be either a noxious weed or an invasive species. A list of plants that are noxious weeds and invasive species will be available in the FSA county office.

Maximum dollar value for coverage sought means the total dollar amount elected by the NAP covered participant for which buy-up coverage may be considered for a value loss crop in a coverage period. The amount is set by the NAP covered participant for each value loss crop and represents the highest amount of field market value of the crop before disaster in a coverage period.

Multiple planted means the same crop is planted and harvested during two or more distinct planting periods in the same crop year, as determined by FSA.

Native sod means land on which the natural state plant cover before tilling was composed principally of native grasses, grass-like plants, forbs, or shrubs suitable for grazing and browsing and is land that has never been tilled (determined in accordance with information collected and maintained by an agency of the USDA or other verifiable records that are provided by a producer and acceptable to FSA) for the production of an annual crop through February 7, 2014.

Normal harvest date means the date harvest of the crop is normally completed in the administrative county, as determined by FSA.

Organic agricultural experts means persons who are employed by the following organizations: Appropriate Technology Transfer for Rural Areas, Sustainable Agriculture Research and Education, or the National Institute of Food and Agriculture, the agricultural departments of universities, or other persons approved by FSA, whose research or occupation is related to the specific practice for which such expertise is sought.

Organic crop means an agricultural commodity that is organically produced consistent with section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502).

Organic farming practice means a system of plant production practices used to produce an organic crop that is approved by a certifying agent in accordance with 7 CFR part 205.

Organic standards means standards in accordance with the Organic Foods Production Act of 1990 (7 U.S.C. 6501-6523) and 7 CFR part 205.

Organic system plan means a plan of management of an organic production or handling operation that has been agreed to by the producer or handler and the certifying agent and that includes written plans concerning all aspects of agricultural production or handling described in the Organic Foods Production Act and the regulations in 7 CFR part 205, subpart C.

Prohibited substance means any biological, chemical, or other agent that is prohibited from use or is not included in the organic standards for use on any certified organic, transitional, or buffer zone acreage. Lists of such substances are specified in §§ 205.602 and 205.604 of this title.

Secondary use means the harvested production bears little resemblance to, or has a different unit of expression than, the unit of expression for the reported intended use. It does not apply to fresh and processed harvested production; is not salvage; not counted as production of the crop for the following purposes, including, but not limited to:

- (1) The determination of whether the unit suffered requisite loss; and
- (2) APH and approved yield.

Seed crop means propagation stock commercially produced for sale as seed stock for eligible crops.

Seeded forage means forage on acreage mechanically seeded with forage vegetation at regular intervals, at least every 7 years, in accordance with good farming practices.

Short rotation woody crops means fast-growing trees that reach their economically optimum size between 4 and 20 years old.

T-Yield means the yield which is based on the county expected yield of the crop for the crop year and is used on an adjusted or unadjusted basis to calculate the approved yield for crops covered under the NAP when less than

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four years of actual, assigned, or appraised yields are available in the APH data base.

Transitional acreage means acreage on which organic farming practices are being followed that does not yet qualify to be designated as organic acreage.

Transitional yield means an estimated yield of that name provided in the Federal Crop Insurance Corporation (FCIC) actuarial table which is used to calculate an average/approved APH yield for crops insured under the Federal Crop Insurance Act when less than four years of actual, temporary, and/or assigned yields are available on a crop by county basis.

[67 FR 12448, Mar. 19, 2002, as amended at 71 FR 13742, Mar. 17, 2006; 76 FR 4805, Jan. 27, 2011; 78 FR 21018, Apr. 9, 2013; 79 FR 74572, 74583, Dec. 15, 2014]

§ 1437.4 Eligibility.

(a) Noninsured crop disaster assistance is available during the coverage period specified in §1437.6 for loss of production or loss of value for value loss crops or prevented planting of eligible commercial crops or other eligible agricultural commodities:

(1) Planted during the planting period, which means the time during which a majority of the crop is normally planted in the area, as determined by FSA, and is considered timely-planted for NAP purposes;

(2) Prevented from being planted during the planting period;

(3) Planted during the late planting period, which means the time after the planting period, during which certain crops, as determined by FSA, may be planted and remain eligible for reduced NAP coverage; and

(4) Determined by FSA to be eligible crops for which:

(i) Catastrophic risk protection under the Federal Crop Insurance Act (7 U.S.C. 1508(b)) is not available;

(ii) Additional coverage under the Federal Crop Insurance Act (7 U.S.C. 1508(c) or (h)) is not available (excluding pilot policies or plans of insurance) and for which the Deputy Administrator determines are appropriate for NAP coverage; or

(iii) These specific practices for these crops are not included under the Federal Crop Insurance Act (7 U.S.C. 1508),

but only when the Deputy Administrator determines in advance of a coverage period that the specific practice is appropriate for NAP coverage and is not available for coverage under Federal crop insurance.

(iv) The producer applies good farming practices.

(b) When other conditions are met, NAP may be available for an eligible loss of:

(1) Any commercial crop grown for food, excluding livestock and their by-products;

(2) Any commercial crop planted and grown for livestock consumption, including but not limited to grain and forage crops;

(3) Any commercial crop grown for fiber, excluding trees grown for wood, paper, or pulp products; and

(4) Any commercial production of:

(i) Aquacultural species (including ornamental fish);

(ii) Floricultural crops;

(iii) Ornamental nursery plants;

(iv) Christmas tree crops;

(v) Turfgrass sod;

(vi) Sweet sorghum;

(vii) Biomass sorghum;

(viii) Industrial crops (including those grown expressly for the purpose of producing a feedstock for renewable biofuel, renewable electricity, or biobased products);

(ix) Seed crops, including propagation stock such as non-ornamental seedlings, sets, cuttings, rootstock, and others, as determined by FSA; and

(x) Sea grass and sea oats.

(c) Except as specified in paragraph (d) of this section, during the first 4 crop years of planting, as determined by the Secretary, native sod acreage in Iowa, Minnesota, Montana, Nebraska, North Dakota, and South Dakota that has been tilled for the production of an annual crop after February 7, 2014, will be subject to the following:

(1) The approved yield will be determined by using a yield equal to 65 percent of the producer's T-yield for the annually planted crop; and

(2) The service fee or premium for the annual covered crop planted on native sod will be equal to 200 percent of the amount determined in §1437.7, as applicable, but the premium will not exceed